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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,158	12/04/2003	Timothy S. Skipper		6789

7590 05/18/2004

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EXAMINER

LEV, BRUCE ALLEN

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/728,158

Applicant(s)

SKIPPER, TIMOTHY S.

Examiner

Bruce A. Lev

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/4/03
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The form and legal phraseology often used in patent claims, such as "**means**", as in line 4, and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "**provided**" in line 2.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims **1-16** are rejected under the judicially created doctrine of double patenting over claims 1-10 of U. S. Patent No. **6,668,975** since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: a ladder having removable rungs comprising a vertical column having slots; and the removable rungs each having a cylinder with a step and key *and/or an elongated rib(s)* being axially offset; and locking means slidably movable with respect to the vertical support column.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claims **1-14** are provisionally rejected under the judicially created doctrine of double patenting over the claims of copending Application No.'s **10/058,901**; **10/162,022**; and **10/651,117**. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: a ladder having removable rungs comprising a vertical column having slots; and the removable rungs each having a cylinder with a step and key being axially offset; and locking means slidably movable with respect to the vertical support column.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 112

Claims 5-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As concerns claims 5, 15, and 17, it is unclear as to how the "ladder having a removable rung" can comprise "a removable rung". An apparatus cannot "comprise" itself. The examiner suggests changing the body of the claim to set forth "***the*** removable rung including...".

Allowable Subject Matter

Claims 1–5 would be allowable upon the submission of ***Terminal Disclaimers*** overcoming the ***Double-Patenting*** rejections, as advanced above.

.Claims ***5-19*** would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. ***112***, second paragraph, set forth in this Office action.; and upon the submission of ***Terminal Disclaimers*** overcoming the ***Double-Patenting*** rejections, as advanced above.

The following is an examiner's statement of reasons for allowance:

As concerns claim ***1***, structural limitations pertaining to the vertical support column having ***first and second holes*** passing through respective walls; ***first and second admission slots*** proximate the respective holes; and the ***rung*** including a ***protrusion*** sliding through the holes and slots and ***resting between the walls***; along with the other structural limitations are neither taught nor suggested by the prior art of record.

As concerns claim ***5***, structural limitations pertaining to the vertical support column having ***a hole*** passing through respective walls; ***an admission slot*** proximate the hole; and the ***rung*** including ***a leading protrusion; a trailing protrusion being angularly offset*** from leading protrusion; and ***a stabilizing protrusions*** angularly aligned with the leading protrusion, and wherein the ***trailing protrusion rests within the***

slot, and the leading protrusion rests between the walls; along with the other structural limitations are neither taught nor suggested by the prior art of record.

As concerns claim **15**, structural limitations pertaining to the vertical support column having **a hole** passing through respective walls and having an **admission slot**; the **rung** including an **elongated rib and a trailing protrusion being angularly offset from the rib and resting within the slot, and the rib resting between the walls**; along with the other structural limitations are neither taught nor suggested by the prior art of record.

As concerns claim **17**, structural limitations pertaining to the vertical support column having **a hole** passing through respective walls and having an **admission slot**; and the **rung** including a **split protrusion having first and second prongs and biasing means**; along with the other structural limitations are neither taught nor suggested by the prior art of record.

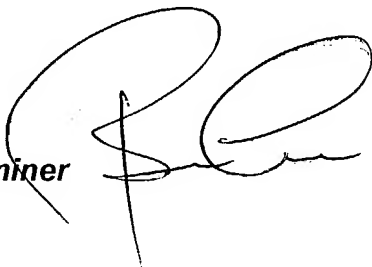
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

5/14/2004

Bruce A. Lev
Primary Examiner
Group 3600

A handwritten signature in black ink, appearing to be 'B. Lev', written over a horizontal line.